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3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF WASHINGTON

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

8 NEWMONT USA LIMITED and  
9 DAWN MINING COMPANY, LLC

10 Defendants.

NO. CV-05-020-JLQ

**STIPULATION OF  
CONFIDENTIALITY AND  
PROTECTIVE ORDER**

11 The United States of America ("United States") is a Plaintiff and a  
12 counterclaim Defendant in the above-captioned case. Newmont USA Limited and  
13 Dawn Mining Company, LLC ("Defendants") are Defendants and counterclaim  
14 Plaintiffs. In contemplation of case-related discovery, the parties have agreed to  
15 enter into a joint stipulation of confidentiality with regard to certain documents.

16 The United States, on behalf of the United States Environmental Protection  
17 Agency ("EPA") and the Department of the Interior ("DOI"), and Defendants  
18 believe that discovery in this case will involve the production of documents which  
19 contain information which may be entitled to confidential treatment. This material  
20 is or will be stamped or otherwise identified as "Confidential," "Business  
21 Confidential," "Contractor Confidential," or "Privacy Act Health Confidential."

22 Additionally, the United States believes discovery will involve the  
23 production of documents within the government's possession, custody, or control,  
24 which contains numerous categories of privileged, Privacy Act, or other protected  
25 information. These documents include documents collected by DOI, which the  
26 United States believes are subject to confidentiality agreements and protective  
27 orders in other litigation and administrative actions, to which the DOI is a  
28 signatory, including The Quapaw Tribe of Oklahoma v. The Department of the

1 Interior, et al., No. 02CV129 B (M) (USDC, N. D. Okla.), and Cobell v. Gale  
2 Norton, Secretary of the Interior, No. 1:96 CV 01285 (RCL) (USDC, D. D.C.).  
3 These documents also include documents collected by DOI containing information  
4 which the United States believes is subject to protection from disclosure pursuant  
5 to, without limitation, the Privacy Act, 5 U.S.C. § 552a, including information  
6 related to Individual Indian Money accounts; the Indian Minerals Development Act  
7 (IMDA), 25 U.S.C. § 2103(c), or the Defense Production Act of 1950, 50 U.S.C.  
8 App. § 2155(d). The documents also may contain protected information, including  
9 trade secrets, 18 U.S.C. § 1905; and confidential business information, e.g., 40  
10 C.F.R. Part 2.

11 All of the above-referenced confidential material will hereinafter be termed  
12 “Confidential Material” or “Confidential Documents” for purposes of this  
13 Stipulation and Order.

14 In view of this stipulation, the Court finds that good cause exists for issuance  
15 of an order requiring limited disclosure of such information. Upon consideration of  
16 the joint motion for such an order filed by the parties hereto and pursuant to Rule  
17 26(c), Federal Rules of Civil Procedure, It is Hereby Ordered:

18 A. The United States, Newmont USA Limited, and Dawn Mining  
19 Company LLC (collectively, the “Parties”) are prohibited from using Confidential  
20 Materials, or their contents, for any purpose other than this litigation. All  
21 Confidential Material produced by the Parties in this case shall have the annotation  
22 “Confidential,” “Business Confidential,” “Contractor Confidential,” or “Privacy  
23 Act Health Confidential” on each page.

24 B. Any information contained in the Confidential Material shall be kept  
25 strictly confidential by the Parties, the Parties’ counsel, and any experts or  
26 consultants (including persons employed by those experts or consultants), and the  
27 information contained therein shall not be disclosed, made public, or made  
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1 available to anyone, except as specifically provided in this Order or by such further  
2 Order as the Court may enter.

3 C. Any Confidential Materials that the Parties' attorneys or their experts  
4 or consultants choose to have photocopied, photographed, electronically scanned,  
5 or otherwise replicated, will be reproduced in such a manner that they contain the  
6 protective order notice information set forth in paragraph A above.

7 D. Any notes or dictation tapes made by persons other than the attorneys  
8 of record in this case (and their associated attorneys, paralegals and support staff)  
9 while reviewing the Confidential Material, which contain information regarding  
10 the Confidential Material, will be marked clearly by the party making the notes or  
11 dictation with the marking noted in paragraph A above, and are subject to the same  
12 provisions as copies of the Confidential Material.

13 E. The Confidential Documents and any information contained therein  
14 may be disclosed without further Court approval only to the following: (1) the  
15 Court and its staff; (2) the attorneys of record in this action, and the attorneys,  
16 paralegals, and support staff, whether employees or independent contractors, as  
17 may be necessary in the ordinary course of representing their respective clients; (3)  
18 testifying and non-testifying experts, consultants and other persons retained by the  
19 attorneys of record in this action for the purposes of this litigation; and (4)  
20 witnesses whose depositions have been noticed or who have been designated as  
21 persons who will or may be called as witnesses at a hearing or trial in this  
22 litigation. Persons described in categories (3) and (4) of the previous sentence may  
23 have access to the Confidential Material, provided, however, that any such person  
24 receiving access to the Confidential material shall, prior to receiving access,  
25 execute an Confidentiality Agreement in the form attached hereto as Exhibit A.  
26 The executed Confidentiality Agreement shall be maintained by the counsel of  
27 record who obtained it. Copies of all executed Confidentiality Agreements shall be  
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1 provided to opposing counsel in this litigation within thirty (30) days of a written  
2 request.

3 F. Disclosure of Confidential Material may only be made to officers,  
4 directors, or employees of Defendants who have responsibility for the preparation  
5 and trial of this action or any appeal therein. Any employee to whom disclosure is  
6 made shall be advised of, and become subject to, the provisions of this Protective  
7 Order prior to such disclosure by executing the Confidentiality Agreement annexed  
8 hereto.

9 G. Confidential Materials shall be filed under seal by the Clerk of Court  
10 in the event that such documents are filed into the record as evidence or exhibits or  
11 for any other purpose. The Parties shall not file with the Court at any time any  
12 pretrial motion, brief, pleading, or other filing in this action, quoting a Confidential  
13 Document or containing information obtained from a Confidential Document,  
14 unless any Confidential portion of such motion, brief, pleading, or other filing is  
15 filed under seal with the Clerk of the Court. Materials or pleadings filed under seal  
16 shall be filed in a sealed envelope or other appropriate sealed container on which  
17 shall be endorsed the title to the action, an indication of the nature of the contents  
18 of such sealed envelope or other container, the phrase "CONFIDENTIAL  
19 MATERIAL—FILED UNDER SEAL" and a statement substantially in the  
20 following form:

21 This envelope or container is sealed and contains  
22 confidential information filed in this case by [name of  
23 party] and is not to be opened or the contents thereof  
24 displayed or revealed except by order of the Court or  
25 pursuant to written stipulation of the parties to this  
26 action. This envelope or container shall not be opened  
27 without order of the Court, except by officers of the  
28 Court or counsel of record, who, after reviewing the  
contents, shall return them to the clerk in a sealed  
envelope or container.

H. It shall be the responsibility of the attorneys of record in this action to  
employ, consistent with this Order, reasonable measures to control duplication of,  
access to, and distribution of the Confidential Documents.

1 I. All individuals to whom documents or copies which are subject to this  
2 Order are disclosed shall destroy or return to the disclosing party upon request any  
3 and all documents, copies, and notes covered by this agreement immediately upon  
4 the termination of this litigation, including all applicable appeals. The obligation  
5 to return or destroy upon request shall exist prior to the termination of this  
6 litigation when an individual or entity is no longer a party or when an attorney or  
7 expert is no longer retained to work on this case, whichever comes earlier.  
8 Individuals returning or destroying documents, copies, and notes under any  
9 circumstance shall certify in writing that the documents, copies and notes have  
10 been returned or have been destroyed.

11 J. In the event that any party disputes a confidentiality designation  
12 hereunder, counsel for the party disputing the designation will notify the disclosing  
13 party in writing of its grounds for disputing the designation, and, within 30 days  
14 after such notification (or additional time if the parties agree), the parties to the  
15 dispute will discuss and attempt to resolve the dispute. If the dispute is not  
16 resolved within 30 days or the extension thereof, the party disputing the  
17 designation may file a motion under seal seeking a ruling from the Court relating to  
18 the designation.

19 K. In the event of the inadvertent disclosure of privileged documents  
20 covered by this agreement and Order, which are not marked as such, the parties  
21 agree that once notified by the disclosing party of such inadvertent disclosure, such  
22 documents will be treated in accordance with the procedures of this agreement and  
23 Order.

24 L. Nothing in this agreement and Order affects or amends the parties'  
25 legal obligations to produce, and legal rights to withhold, documents that are  
26 otherwise protected by privileges or legal doctrines including, but not limited to,  
27 attorney-client privileged documents, enforcement confidential documents,  
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documents subject to the deliberative process privilege, and documents that constitute work product.

Submitted December 13, 2005

s/ Paul Gormley  
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Dated this 13th day of December, 2005.

s/ Justin L. Quackenbush

JUSTIN L. QUACKENBUSH  
 SENIOR UNITED STATES DISTRICT JUDGE

1 Stipulation and Protective Order Confidentiality Agreement

2 The undersigned is currently employed or otherwise engaged as a consultant or  
3 contractor by the following company located at the following address:

4 \_\_\_\_\_  
5 \_\_\_\_\_

6 The undersigned hereby acknowledges that he/she has read the foregoing  
7 Stipulation and Protective Order (Protective Order) executed by the attorneys of  
8 record for the parties in the action presently pending in the United States District  
9 Court for the Eastern District of Washington, entitled United States v. Newmont  
10 USA Limited and Dawn Mining Company, LLC, NO. CV-05-020-JLQ. The  
11 undersigned understands the terms of the Protective Order and agrees, upon threat  
12 of penalty of contempt, to be bound by such terms. The undersigned understands  
13 that disclosure of information which has been designated as confidential by the  
14 submitter of that information may cause substantial harm to the affected business'  
15 competitive position. Accordingly, among other responsibilities, the undersigned  
16 shall only share such information with persons specifically authorized to receive  
17 the information pursuant to the Protective Order, shall retain the information in a  
18 secure manner, and shall use such information only for the purposes authorized by  
19 the Protective Order. The undersigned understands that the pledge of  
20 confidentiality under this Agreement continues after the lawsuit is over.  
21 Furthermore, the undersigned understands that a breach of the Protective Order  
22 may subject him/her to civil claims for damages, criminal prosecution and/or  
23 penalties that the Court may impose for contempt.

24 Dated: \_\_\_\_\_  
25 Signed: \_\_\_\_\_  
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